



June 30, 2000

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-2482

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136771.

The City of Houston (the "city") received a request for the completed internal affairs investigation "stemming from the KTRK TV Courthouse Blues" presentation. The requestor agrees to the redaction of confidential information. You do not seek to withhold "clearly public information such as municipal court records" or "information that [the requestor] has had access to as a result of his previous public information request." Further, you have already released copies of disciplinary letters relating to sustained allegations of police officer misconduct. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with

¹We note that we did not receive the videotapes and cassette tapes to which you refer in your request for a decision. However, we assume that the information submitted constitutes a "representative sample" of the responsive information; we further assume that the records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You inform us that the requested information pertains to a pending criminal case in which allegations have been presented to the district attorney for possible prosecution or further investigation. We therefore believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.*²

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Because you also assert that the IAD investigation is confidential pursuant to section 552.101 in conjunction with section 143.089(g) of the Local Government Code, we will discuss that confidentiality provision in connection with the basic information.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters’ and police officers’ civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city’s civil service director and the other by the city police department.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action, as contemplated by chapter 143, must be released to the public unless the information comes within one of the Public Information Act’s exceptions to required public disclosure. Local Gov’t Code § 143.089(a)(2). You state that you have already released copies of disciplinary letters relating to sustained allegations of police officer misconduct. We assume that those letters contain the basic information required to be released under section 552.108(c) as to the sustained allegations. Information relating to investigations that have not resulted in disciplinary action may be maintained in the city’s police department personnel file, not in the civil service director’s files. Therefore, basic information regarding allegations that have not been sustained is made confidential under section 143.089(g). The city may not release any information contained in the requested IAD report relating to investigations that have not

²We note that you also assert that, because “the criminal investigation has not resulted in any convictions or deferred adjudications, the city believes the investigation to be excepted from disclosure by § 552.108(a)(2) as well.” Section 552.108(a)(2) is properly asserted when the investigation has finally concluded in a result other than conviction or deferred adjudication, such as acquittal, dismissal, or running of the statute of limitations. The proper exception to assert when charges or investigations are pending is section 552.108(a)(1).

resulted in disciplinary actions. *See also* Gov't Code § 143.1214, Open Records Decision No. 642 (1996).

However, once information is in the public domain, the law cannot recall the information. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the city may not withhold from disclosure the still photographs submitted to this office which appear to have been printed from a tape of the KTRK TV "Courthouse Blues" presentation. Thus, with the exception of the basic front page offense information regarding sustained allegations and information already in the public domain, the city may withhold the requested information from disclosure based on section 552.108(a)(1) and section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Patricia Michels Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136771

Encl. Submitted documents

cc: Mr. Wayne Dolcefino
KTRK TV Under Cover
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)